No. 77-1818

In the Supreme Court of the United States

OCTOBER TERM, 1978

LAWRENCE DAVID RAMAPURAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1818

LAWRENCE DAVID RAMAPURAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, who was charged with an act of juvenile delinquency and subsequently transferred for criminal prosecution as an adult, contends that certifications filed by the United States Attorney showing a refusal by the state prosecutor and the appropriate state court to assume jurisdiction over him with respect to the delinquent act were either invalid or untimely under 18 U.S.C. 5032 and that the district court thus lacks jurisdiction to try him.

Petitioner was charged by criminal information in the United States District Court for the District of Maryland with an act of juvenile delinquency, as defined in 18 U.S.C. 5031, the underlying offense being the unlawful

receipt of stolen dynamite, in violation of 18 U.S.C. 842 (h) and 2.[1] Thereafter, petitioner filed a motion to dismiss the proceedings against him for lack of jurisdiction. The district court denied that motion and granted the government's motion, pursuant to 18 U.S.C. 5032, to transfer petitioner for criminal prosecution as an adult (Pet. App. 4-12). Petitioner appealed from both orders. The court of appeals affirmed (Pet. App. 1-3).

1. The information was filed against petitioner on January 14, 1976, at a time when he was 17 years old, and it was accompanied by a certification from the United States Attorney, pursuant to 18 U.S.C. 5032, attesting that the Maryland State's Attorney had refused to assume jurisdiction over petitioner with respect to the alleged act of juvenile delinquency (A. 7, 22).[2] The district court ordered that petitioner be committed to the custody of the Attorney General for observation and study under 18 U.S.C. 5037(c). On February 18, 1976, the government moved to transfer petitioner for criminal prosecution as an adult, pursuant to 18 U.S.C. 5032, which permits such a transfer if the alleged delinquent act, if committed by an adult, would be a felony punishable by a maximum penalty of at least 10 years' imprisonment (Pet. 5).[3] This

---

[1]Federal proceedings against juvenile delinquents are governed by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq.* The most recent amendments to the Act were part of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1133.

[2]"A." refers to the appendix filed by petitioner in the court of appeals.

[3]The alleged act of juvenile delinquency, the knowing and unlawful receipt of approximately 100 sticks of dynamite, carries a maximum penalty of 10 years' imprisonment and a $10,000 fine (18 U.S.C. 844(a)).

motion was not acted upon, however, and shortly thereafter an agreement entered into by petitioner, his counsel, and the government conditionally deferring prosecution was formally approved by the court (A. 4).

In March 1977, after petitioner was arrested by local authorities and charged with the armed robbery of a gasoline station and several additional and unrelated breaking and entering offenses, to which petitioner subsequently confessed (A. 63-64, 75, 77), the government notified the district court that, as a result of petitioner's failure to abide by the conditions set forth in the deferred prosecution agreement (A. 43, 57), it wished to pursue its earlier motion to transfer petitioner for criminal prosecution as an adult. At the hearing on the motion to transfer, petitioner moved to dismiss the delinquency proceedings for lack of jurisdiction, contending for the first time that the United States Attorney's Section 5032 certification was invalid because it certified only that the state prosecutor had refused to assume jurisdiction over petitioner, and not, as petitioner contended was necessary to satisfy the requirements of 18 U.S.C. 5032, that the state juvenile court had refused to assume such jurisdiction. The court granted the transfer motion, subject to the disposition of petitioner's motion to dismiss (A. 5, 92). With its answer to the dismissal motion, the government submitted a supplemental certification and a letter from the Chief Judge of the Circuit Court for Baltimore County, Maryland, stating that the state juvenile court refused to assume jurisdiction with respect to the original delinquent conduct (A. 18, 21).

The district court denied petitioner's motion to dismiss, finding that the original certification satisfied the requirements of 18 U.S.C. 5032, that in any event the

second certification, showing a refusal of jurisdiction by the state juvenile court, was timely and sufficient, and that petitioner was not prejudiced in any way by the delay in filing the second certification (Pet. App. 4-12). The court of appeals affirmed on the ground that "the admittedly proper second certification was timely filed" (Pet. App. 3).

2. To begin with, review is unwarranted in this case because the district court's orders denying petitioner's motion to dismiss the information and granting the government's motion to transfer the case for adult criminal prosecution are interlocutory and thus, absent circumstances not present here, unappealable. See *United States* v. *MacDonald*, No. 75-1892 (May 1, 1978), slip op. 4 and 11 n. 7; *Abney* v. *United States*, 431 U.S. 651, 656-657 (1977); *DiBella* v. *United States*, 369 U.S. 121, 124 (1962); *Snodgrass* v. *United States*, 326 F. 2d 409 (8th Cir. 1964). Moreover, the information has been superseded by an indictment returned on June 8, 1977, in the United States District Court for the District of Maryland, charging petitioner as an adult with receipt of stolen dynamite in violation of 18 U.S.C. 842(h) and 2. If petitioner had any remedy, therefore, it would lie in an attack on the indictment at the proper time, since the validity of the information is now of solely academic interest.[4]

3. In any event, the district court's decision is correct on the merits as to both certifications.

The first certification, supported by the letter of the State's Attorney for Baltimore County stating his refusal to assume jurisdiction over the underlying offense, sufficiently showed an abdication of jurisdiction by the

[4]A motion to dismiss the indictment is pending in the United States District Court.

state court to comply with 18 U.S.C. 5032. Under Maryland law, final discretion as to prosecution of juveniles for state offenses is vested exclusively in the State's Attorney, so that, as a practical matter, the state court was incapable of assuming jurisdiction over the offense in question once the State's Attorney declined to prosecute. See *Murphy* v. *Yates*, 276 Md. 475, 495, 348 A. 2d 837, 847-848 (1975); *In re Anderson*, 20 Md. App. 31, 48-49, 315 A. 2d 540, 549-550, aff'd, 272 Md. 85, 321 A. 2d 516, appeal dismissed, 419 U.S. 809 (1974), cert. denied, 421 U.S. 1000 (1975). As the district court correctly reasoned (Pet. App. 7), the intent of Congress to "defer to the states in matters of juvenile delinquency" is adequately served by "giving the state [if it has adequate juvenile programs] the first opportunity to assert jurisdiction," as was done here. See *United States* v. *Cuomo*, 525 F. 2d 1285, 1290 (5th Cir. 1976).

Even were the first certification faulty, the second certification, supported by a letter from the appropriate state court and filed prior to petitioner's indictment and arraignment, was, as both courts below concluded, filed in sufficient time to cure the defect and supply district court jurisdiction for proceedings on the indictment. *United States* v. *Cuomo, supra*, 525 F. 2d at 1289-1290. See also *United States* v. *Hill*, 538 F. 2d 1072, 1076-1077 (4th Cir. 1976).[5] By filing the second certification at that time, the government in no way defeated the statutory purpose,

[5]Although, as petitioner points out (Pet. 12-15), no district court proceedings were had against the juvenile in *United States* v. *Cuomo, supra*, before the filing of the second certification there, the express holding of *Cuomo* is that the government was "correct" in its view that "the certification need be filed only prior to arraignment in the district court." 525 F. 2d at 1289. Moreover, the Fifth Circuit noted that it was not "deciding the latest possible time for filing" such a certification. *Id.* at 1290.

noted above, of assuring states with adequate juvenile offender programs the opportunity to deal with juvenile offenses if they so choose, nor did the government thereby prejudice petitioner in his defense against the charge on which he has been indicted. Thus, the requirements of 18 U.S.C. 5032 were satisfied by the second certification, as well as the first, and the district court properly allowed the criminal prosecution of petitioner to go forward.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

SEPTEMBER 1978

DOJ-1978-09